Bipartisan ECPA Reform Legislation Introduced in Congress

by Greg Nojeim [1]
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Bipartisan legislation has been introduced in Congress to require that government agents obtain a warrant from a judge if they want to demand that service providers disclose stored email or track people using their cell phones (subject, of course, to emergency exceptions). The Online Communications and Geolocation Protection Act, (H.R. 983) [2], introduced in the House of Representatives on March 6, was co-sponsored by Reps. Zoe Lofgren (D-CA), Ted Poe (R-TX) and Suzanne DelBene (D-WA).

It is highly significant that the first bill introduced this year on reform of the Electronic Communications Privacy Act (ECPA) is bipartisan and that it addresses both disclosure of stored communications and location tracking.

The legislation would codify two key recommendations of Digital Due Process [3], a remarkably broad coalition of tech companies, advocates across the political spectrum, think tanks, and academics who are pushing to update ECPA to extend the Constitution's traditional protections to new technologies.

ECPA was written in 1986, and some of its key provisions have been outpaced by technology. It has become increasingly difficult for companies, law enforcement agents, and courts to apply the law, especially as it relates to mobility and the migration of sensitive data to the cloud. In addition to leaving consumers uncertain of their rights, the complexity of the current law can slow innovation in the tech industry and hurt the competitiveness of U.S. companies.

CDT looks forward to working with House Judiciary Committee Chairman Bob Goodlatte and his Senate counterpart, Patrick Leahy, to help them enact legislation that would update ECPA to apply the traditional protection of the warrant to the new technologies we depend on in our daily lives. The Lofgren-Poe-DelBene bill is a first step in that process.

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